

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

AMBER BRUNET,

Plaintiff,

v.

Case No. 18-cv-1267-pp

COMMISSIONER OF THE
SOCIAL SECURITY ADMINISTRATION,

Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR LEAVE
TO PROCEED WITHOUT PREPAYMENT OF THE FILING FEE (DKT. NO. 2)**

On August 16, 2018, the plaintiff filed a complaint seeking judicial review of a final administrative decision denying her claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. The plaintiff also filed a motion for leave to proceed without prepayment of the filing fee. Dkt. No. 2.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the filing fee; if not, it must decide whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts presented in the plaintiff's affidavit, the court concludes that the plaintiff has the ability to pay a portion of the filing fee. The plaintiff says that she has no income of her own, but that her husband has wages of \$2,400 per month and disability of \$700 per month; that income also

provides for the plaintiff's fourteen-year-old stepson Dkt. No. 2 at 2, 4. The plaintiff and her husband have \$50 in cash and \$5 in a savings account. Id. at 3. The family's expenses total approximately \$2,500 per month, id. at 4-5, leaving about \$600 in disposable income. The family has two vehicles—a 2005 Ford Focus worth \$1,500 and a 2017 Dodge Ram, which the plaintiff does not value. Id. at 3-4.

If the court were to require the plaintiff to pay the full \$400 fee, it would leave little cushion for the family over their monthly expenses. The plaintiff does have monthly disposable income, however, and the court concludes that she can pay \$150 of the filing fee. The court will require her to pay that amount by a date certain.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 Fed. 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision if the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff's complaint states that the Administrative Law Judge's residual function capacity assessment "did not contain any off task limitations." Dkt. No. 1 at 4. In addition, according to the complaint, the ALJ's

RFC assessment was not function by function; the decision relied heavily on daily activities to show that the plaintiff was able to work full time; the ALJ's decision "noted IQ of 69 but did not consider Listing 12.05;" and the vocational expert provided national job numbers when local job numbers were required.

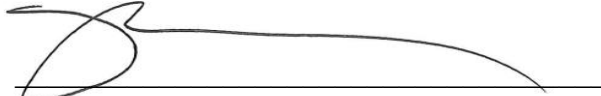
Id. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS IN PART** the plaintiff's motion for leave to proceed without paying the filing fee. Dkt. No. 2. The court **ORDERS** that the plaintiff shall pay a reduced filing fee of **\$150.00** by the end of the day on **Friday, September 21, 2018**. If the plaintiff needs additional time to pay the filing fee, she may file a motion (*before* September 21, 2018) asking the court for additional time. The plaintiff may pay the fee in cash by bringing it to the clerk's office, 517 East Wisconsin Avenue, Room 362, Milwaukee, between 8:30 a.m. and 4:30 p.m. She may pay by check, money order or cashier's check, by making the check out to Clerk, U.S. District Court, and either bringing it into the clerk's office or mailing it to Clerk of Court, United States District Court, 517 East Wisconsin Avenue, Room 362, Milwaukee, WI 53202. She also may pay by credit card over the phone, by calling 414-297-3417 and asking for the cashier.

If the court does not receive the \$150 reduced filing fee by the end of the day on Friday, September 21, 2018, the court may dismiss the plaintiff's case for failure to pay the fee.

Dated in Milwaukee, Wisconsin this 22nd day of August, 2018.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge